HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL NO. 340 OF 2007

BETWEEN:

Chintapatla Munikrishnaiah

… Appellant

And

District Collector, Nellore and another

……Respondents

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:: JUDGMENT ::

Counsel for the appellant : Shri S.V. Muni Reddy

April 25, 2007

Per G.S. SINGHVI, CJ

Whether the concurrent finding recorded by Joint Collector-cum-Settlement Officer, Nellore (hereinafter described as 'the Settlement

Officer') and District Judge, Nellore on the appellant's entitlement to be treated as ryot in respect of Ac.5-32 cts. of land comprised in Survey No.161/3 in Periyavaram Village of Venkatagiri Mandal, Nellore District is vitiated by an error of law apparent on the face of the record is the question which arises for determination in this appeal filed by Chintapatla Munikrishnaiah for setting aside order dated 18-01-2007 passed by the learned Single Judge in Writ Petition No.717 of 2007.

The appellant's grandfather and father are said to have occupied the land in question and cultivated the same. After about four decades of the enactment of Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short, 'the Act'), the appellant filed an application under Section
56 (1) of the Act for issue of ryotwari patta in his favour.

By an order dated 26-09-1990, the Settlement Officer allowed the application and declared the appellant as lawful ryot. Mandal Revenue Officer, Venkatagiri challenged that order by filing an appeal. Estates Abolition Tribunal-cum-District Judge, Nellore vide his order dated 02-08-1995 allowed the appeal and remanded the case to the Settlement Officer for fresh adjudication of the application filed by the applicant.

In compliance of the direction given by the Tribunal, the Settlement Officer considered the matter afresh and passed order dated 17.03.1998 vide which he dismissed the appellant's application. The appeal preferred against that order was dismissed by District Judge, Nellore vide his judgment dated 13-11-2002.

After four years, the appellant field Writ Petition No.717 of 2007 for quashing orders dated 17-03-1998 and 13-11-2002. He pleaded that the finding recorded by the Settlement Officer on the issue of possession of land in question by his predecessors was perverse and

District Judge, Nellore committed serious error by approving the same. The appellant also tried to explain the delay by stating that he had fallen sick and remained admitted in People's Nursing Home at Srikakulam from 01-12-2002 to 26-12-2006.

The learned Single Judge dismissed the writ petition by observing that the concurrent finding recorded by Joint Collector and the District Judge on the appellant's entitlement to be treated as ryot of the land in question was based on correct appreciation of evidence and did not call for interference under Article 226 of the Constitution of India.

Shri S.V. Muni Reddy assailed the order of the learned Single Judge mainly on the ground that it is devoid of reasons. He argued that while dismissing the writ petition, the learned Single Judge omitted to consider the documentary evidence produced by the appellant to show that his grandfather and father had occupied the land and cultivated the same till the commencement of the Act. Shri Reddy submitted that cist receipts (Ex.P.1), notice dated 16-12-1940 (Ex.P.2) and Takid dated 29-04-1942 (Ex.P.3) produced by the appellant were sufficient to show that his predecessors were in cultivating possession of the land. He then argued that the concurrent finding recorded by the Settlement Officer and the District Judge on the issue of his entitlement to be treated as ryot is not based on a correct appreciation of evidence and, therefore, the orders passed by them are liable to be quashed.

We have given serious thought to the arguments of the learned counsel, but have not felt persuaded to agree with him that the orders impugned in the writ petition were vitiated by an error of law apparent on the face of the record or that the learned Single Judge committed an error by dismissing the writ petition.

The parameters for exercise of the High Court's power of judicial review in matters involving challenge to judicial and quasi-judicial orders are well defined. The High Court will issue a writ of certiorari if it is found that the order under challenge has been made by the Court or Tribunal or quasi-judicial which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action complained of has been taken in disregard of rules of natural justice. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/factors. However, a writ court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

In **Syed Yakoob v. K.S. Radhakrishnan**[1] the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and laid down the following propositions:

> i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by

the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

The law laid down in **Syed Yakoob**'s case (supra) has been followed in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. V. Ist ADJ Varanasi & ors.**[2]

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[3], the Supreme Court, while dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

"Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did.

When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **R.S. Saini v. State of Punjab and others**[4] the Supreme Court examined the correctness of an order passed by the High Court which had dismissed the writ petition filed by the appellant against his removal from the post of the President of Municipal Committee. While confirming the order of the High Court, the Supreme Court observed as under:

"The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

In **Surya Dev Rai v. Ram Chander Rai**[5]**,** the Supreme Court traced out the history of development of the High Court's power to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the

smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where “a stitch in time would save nine”. At the end, we may sum up by saying that the power is there but the exercise is discretionary

which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

In the light of the above, we shall now consider whether orders dated 17-03-1998 and 13-11-2002 passed by the Settlement Officer and the District Judge respectively are legally infirm and the learned Single Judge committed an error by refusing to nullify the same.

A reading of order dated 17-03-1998 shows that the Settlement Officer referred to the evidence produced by the appellant and held that he has failed to prove the possession of his predecessors. He noted that the applicant had not produced originals of Exs.P2 and P3 and held that the xerox copies could not be relied for recording a finding in his favour. The Settlement Officer further noted that two of the cist receipts were printed on both the sides showing the names of Periyavaram Estate and Gajula Pellur Estate and no satisfactory explanation has been given by the appellant as to how the land in question has fallen in two estates. The Settlement Officer also referred to reports dated 18-07-1987 and 02-01-1998 and held that the land in question vests in the government and the same does not belong to the applicant. The learned District Judge made an elaborate analysis of the entire evidence and rejected the appellants' claim. Paragraphs (9) and (11) of order dated 13.11.2002 passed by the learned District Judge, which contain detailed reasons, are worth noticing. The same read as under:

9. The appellant in order to prove that he and his predecessors were in possession of the said property, filed Ex.P-1, a series of cist receipts alleged to have been paid by his father to the Estate Officer and subsequently to the Village Officers. Ex.P-4 doesn't show any seal or stamp of the estate, equally, Takids alleged to have been sent to the appellant's father under Exs. P-2 and P-3. No doubt, one seal mentioning Periyavaram Estate, Venkatagiri town was affixed on Exs.P-2 and P-3 but they look very fresh and not at any rate of 60 years

old. It is not known whether the signatory was really a Manager of the Estate. PW-1 did not examine any person from the Estate Office. He did not examine the Village Officers to prove the genuineness of the land revenue receipts.

11. After all, it is not the case of the appellant even that his predecessors have title to the property. He himself that his grand father occupied the site. Though, earlier one Kamisetty Chenchuramaiah was shown as respondent in S.R.No. 2/56(1)/89, for the reasons best known, he was not impleaded as a party now. It makes no difference as the appellant had to prove his possession and enjoyment of the property. PW-1 in his evidence admitted " My grand father had encroached upon the same for cultivation purposes and his possession was not questioned by the Estate people. They treated his possession as 'Sivoyjama' cultivation and charged cist for the use and occupation thereof". PW-1 except filing some cist receipts, could not prove that they are true and genuine. He could have filed the village records wherein the name of his grand father or father were shown as in possession of the property. These documents are self serving documents. I need not state that these documents could be even created for the purpose of the case. It might have been even created by catching hold of erstwhile Estate Officers. There is no reason why the petitioner had kept quite for about 40 years for claiming the property, if really the Estate Managers had directed the appellant's father to pay costs for Survey. It was not known what happened subsequently. The appellant claims "By virtue of long possession and cultivation of the land for several years past with dry crops like Ulava and Ragi depending upon rains, my father acquired occupancy rights over the land. He gave this land to me during the division of our family properties". These facts were not at all proved. When the Government is contending that the land was kept fallow, there is no reason why the appellant failed to file the copies of adangal etc., to show raising of crops and thereby his possession. Except the self serving testimony, absolutely, no evidence whatsoever was filed to prove the possession as alleged by him. No neighbouring ryots, village officers were examined. Undoubtedly, this claim is made as it was found that the land is vacant. In fact, the land is situated in between Handloom Society Building and R.T.C. Depot on Venkatagiri-Tirupati high road. It looks as though the school children are using it as a

play ground of Z.P. Boys High School, Venkatagiri."

In our opinion, the concurrent findings recorded by the Settlement Officer and the District Judge are based on proper appreciation of evidence and the orders passed by them cannot be declared as vitiated by an error of law apparent on the face of the record because neither of them considered any inadmissible evidence or ignored legally admissible evidence. Learned counsel for the appellant could not offer any explanation as to why the originals of Exs.P-2 and P-3 were not produced before the Settlement Officer and why his client maintained silence for about 40 years after abolition of the estates. He also could not explain as to why the appellant did not examine other persons to prove the possession of his predecessors on the date of enforcement of the Act.

In view of the above, we hold that the learned Single Judge did not commit any error by declining the appellant's prayer for quashing order dated 17-03-1998 and 13-11-2002.

At the cost of repetition, we consider it necessary to observe that while exercising power under Article 226 of the Constitution of India, the High Court cannot sit in appeal over the findings of fact recorded by the judicial and quasi-judicial authorities and interfere with the orders passed by them merely because on re-appreciation of evidence, it is possible to form a different opinion on the subject matter in dispute.

There is another reason for declining relief to the appellant i.e., four years' delay in filing the writ petition. In an attempt to explain the delay, the appellant made the following averments in paragraph-8 of the affidavit filed in support of the writ petition:

> "8. I respectfully submit that I fell ill and admitted in the People's Nursing Home, Srikakulam on 01-12-2002 and undergone treatment till 26-12-2006 for the disease and that during that period I am unable to move from bed. I state that the doctor who

treated me issued a medical certificate dated 26-12-2006 and the same may be read as part and parcel of this affidavit. In view of the disease, I could not avail the remedy within time. The delay is neither wilful nor wanton. Due to the reason stated supra, I could not file the writ petition within time. I have established sufficient cause for not presenting the writ petition within time. I pray that the latches, if any, may be pleased to excuse, otherwise, I will be put to serious and irreparable loss and injury."

In our opinion, the above re-produced explanation cannot be entertained for overlooking the delay of four years because the appellant did not produce any document to show that he remained admitted in People's Nursing Home, Srikalahasti for about more than four years or that the doctor had advised him not to move from the bed.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

April 25, 2007

C.V. NAGARJUNA REDDY, J

svs

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[1] AIR 1964 SC 477

[2] (2002) 9 SCC 375

[3] AIR 1970 SC 61

[4] JT 1999 (6) SC 507 = (1999) 8 SCC 90

[5] AIR 2003 SC 3044